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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

8 F.E., et al.,

Case No. [16-cv-03983-BLF](#)

9 Plaintiffs,

10 v.

11 MORELAND UNIFIED SCHOOL  
DISTRICT, et al.,

12 Defendants.

**ORDER GRANTING UNOPPOSED  
MOTION TO APPROVE MINOR'S  
COMPROMISE; VACATING AUGUST  
22, 2019 HEARING**

[Re: ECF 40]

14  
15 Plaintiff Fritz Eberly, as guardian and guardian ad litem for Plaintiff and minor F.E.,  
16 petitions the Court for an order approving the compromise of F.E.'s claims, pursuant to the  
17 settlement agreement ("Settlement Agreement," ECF 40-2) entered into by and between Plaintiffs  
18 Fritz and Delfina Eberly on behalf of themselves and their child, Plaintiff and minor F.E., and  
19 Defendants Moreland School District, Theresa Molinelli, Rosie Luis, Heide Hansen, Robert  
20 Garcia, Joyce Galvin, and Sarah Gein Belsick (collectively "Defendants"), and the Alliance of  
21 Schools for Cooperative Insurance Program ("ASCP"), on behalf of Defendants.<sup>1</sup> Mot., ECF 40.  
22 Pursuant to Civil Local Rule 7-1(b), the Court finds the motion suitable for submission without  
23 oral argument and hereby VACATES the hearing scheduled for August 22, 2019. For the reasons  
24 stated below, the Court GRANTS the motion.

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28 <sup>1</sup> Plaintiffs acknowledge in the Settlement Agreement that Denise Booker and Janelle Astor were  
improperly named as defendants in this case. *See* ECF 40-2 at 2.

1           **I. BACKGROUND<sup>2</sup>**

2           Plaintiffs Fritz and Delfina Eberly, individually on behalf of their minor son F.E.,<sup>3</sup> filed  
3 this action against Defendants Moreland School District (“District”), Theresa Molinelli, Rosie  
4 Luis, Heide Hansen, Janell Astor, Robert Garcia, Sarah Gein, Joyce Galvin, and Denise Booker,  
5 alleging six causes of action: (1) violations of section 504 of the Federal Rehabilitation Act of  
6 1973, 29 U.S.C. § 794; (2) violations of Title II of the Americans with Disabilities Act, 42 U.S.C.  
7 § 12101, *et seq.*; (3) violations of F.E.’s constitutional rights under the Fourteenth Amendment,  
8 pursuant to the Civil Rights Act of 1983; (4) violations of F.E.’s constitutional rights under the  
9 Fourth Amendment, pursuant to 42 U.S.C. § 1983; (5) intentional infliction of emotional distress;  
10 and (6) negligent infliction of emotional distress. Compl., ECF 1.

11           F.E., who was seven and eight years old during the relevant time period, suffers from  
12 disabling conditions that qualify him for special education under federal and state law under the  
13 primary eligibility category of Emotionally Disturbed, with a secondary classification of Autism.  
14 *Id.* ¶¶ 18–23; *see also id.* ¶¶ 34–39. Due to these conditions, F.E. requires any school he attends to  
15 provide him certain aid, including applied behavioral therapy (“ABA”). *Id.* ¶¶ 23, 25–36. The  
16 District placed F.E. at Payne Elementary in 2013–14 and at Baker Elementary School in the 2014–  
17 18 year. *Id.* ¶ 24. Plaintiffs allege that at these schools, the “[s]upport staff, specifically the  
19 classroom aides,” including Defendants Luis, Molilli, Gein, Jones, and Booker, “never received  
20 appropriate education, training, [or] supervision in implanting an ABA based behavioral  
21 program,” and that “staff failed to implement appropriate positive behavioral supports, instead  
22 relying upon restraint, seclusion and other ineffective aversive responses which only further  
23 reinforced his maladaptive behaviors.” *Id.* ¶¶ 27–28; *see also id.* ¶¶ 41–62. Moreover, the District  
24 did not provide F.E. the necessary academic instruction. *Id.* ¶¶ 30–33; *see also id.* ¶¶ 41–62.  
25 These actions injured F.E. by causing him physical harm and emotional trauma, by blocking his  
26 access to academic instruction, and by reinforcing and escalating his behavioral issues. *Id.* ¶ 33 &  
27 n.3; *see also id.*, causes of action, ¶¶ 1–69.

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28           <sup>2</sup> This section is based on allegations made in the Complaint. The Court accepts these allegations  
29 as true for the purposes of ruling on this motion.

<sup>3</sup> The Court subsequently appointed Mr. Eberly F.E.’s guardian ad litem. ECF 14.

1           On July 14, 2016, Plaintiffs initiated this lawsuit against the District and various  
2 employees. ECF 1. After some discovery, the parties reached an agreement resolving the case.  
3 Tollner Decl. ¶¶ 9, 11–12, ECF 49. The Settlement Agreement was signed on March 1, 2019.  
4 *Id.* ¶ 11.

5           **II.    LEGAL STANDARD**

6           “District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c), to  
7 safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638 F.3d 1177, 1181  
8 (9th Cir. 2011). “Rule 17(c) provides, in relevant part, that a district court ‘must appoint a  
9 guardian *ad litem*—or issue another appropriate order—to protect a minor or incompetent person  
10 who is unrepresented in an action.’” *Id.* (quoting Fed. R. Civ. P. 17(c)). “In the context of  
11 proposed settlements in suits involving minor plaintiffs, this special duty requires a district court  
12 to ‘conduct its own inquiry to determine whether the settlement serves the best interests of the  
13 minor.’” *Id.* (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978)).

14           In cases involving the settlement of a minor’s federal claims, a district court must consider  
15 whether the proposed settlement is fair and reasonable as to each minor plaintiff. *Id.* at 1182.  
16 “[T]he district court should evaluate the fairness of each minor plaintiff’s net recovery without  
17 regard to the proportion of the total settlement value designated for adult co-plaintiffs or plaintiffs’  
18 counsel—whose interests the district court has no special duty to safeguard.” *Id.*

19           While the *Robidoux* Court expressly limited its holding to settlement of a minor’s federal  
20 claims, “district courts have found the *Robidoux* rule reasonable in the context of state law claims  
21 and have applied the rule to evaluate the propriety of a settlement of a minor’s state law claims as  
22 well.” *Frary v. Cnty. of Marin*, Case No. 12-cv-03928, 2015 WL 3776402, at \*1 (N.D. Cal. June  
23 16, 2015); *see also Mitchell v. Riverstone Residential Grp.*, No. S-11-2202, 2013 WL 1680641, at  
24 \*1 (E.D. Cal. Apr. 17, 2013) (collecting cases). California law, which governs the state law  
25 causes of action, also requires that a settlement for a minor be approved by the court. *See Cal.*  
26 Prob. Code § 3601; Cal. Fam. Code § 6602.

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1           **III. DISCUSSION**

2           Under the proposed settlement, the District will pay F.E. for the costs related to F.E.'s  
3           education through December 31, 2021 in an amount not to exceed \$430,000.00. Tollner Decl.  
4           ¶ 13; Settlement Agreement § 1.1. This money will be available to Plaintiffs for costs related to  
5           F.E.'s tuition, extended school year (summer school), and therapeutic services incurred for F.E.'s  
6           attendance at certain schools, and/or costs related to privately obtained speech and language  
7           therapy, occupational therapy, behavior services, tutoring, teaching services, educational therapy,  
8           travel related expenses, and/or counseling. Settlement Agreement § 1.1.1.1–4. The District will  
9           issue this money to F.E.'s parents, Plaintiffs Mr. and Mrs. Eberly, on a monthly basis as  
10           reimbursements for their payments for tuition and services for F.E. *Id.* In addition to these funds,  
11           ASCP will pay \$100,000 for damages and/or attorneys' fees. *Id.* §§ 11.2–3. ASCP will issue  
12           this money directly to the Client Trust Fund of the Tollner Law Offices within 60 days of the  
13           Agreement's effective date. *Id.* No portion of the monies agreed to be paid by the District or  
14           ASCP under the Settlement Agreement are to be placed in any other trust, nor is any surety bond  
15           required or sought. Tollner Decl. ¶ 14.

16           In light of the facts of the case, the minor's claims against the Defendants, and the  
17           settlement of disputes regarding educational harm, the Court finds that the net amount to be  
18           distributed is fair and reasonable. The terms achieve the goal that F.E. and his guardian ad litem  
19           had for bringing the lawsuit. Accordingly, the Court APPROVES the settlement of F.E.'s claims.

20           **IV. ORDER**

21           Based on the foregoing, it is hereby ORDERED that:

- 22           1. The Court APPROVES the settlement on behalf of the minor as set forth herein and  
23           in the parties' Settlement Agreement.
- 24           2. ASCP is directed to issue \$100,000 to the Client Trust Fund of the Tollner Law  
25           Offices within 60 days of the date of this Order.
- 26           3. All future dates and deadline in this case are VACATED.
- 27           4. The parties shall file, a stipulation regarding dismissal of this case or a written  
28           status report **on or before May 15, 2019.**

1                   **IT IS SO ORDERED.**  
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Dated: March 28, 2019



BETH LABSON FREEMAN  
United States District Judge